

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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SOLOMON GERMAN, *as Administrator of the
Estate of Esther S. German, deceased,*

Plaintiff,

**REPORT AND RECOMMENDATION
11 CV 3345 (CBA) (LB)**

-against-

SUCCESS CAR RENTAL AND LEASING INC.,

Defendant.

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BLOOM, United States Magistrate Judge:

Plaintiff commenced this wrongful death action on July 12, 2011. The Court's records do not reflect that plaintiff served defendant Success Car Rental and Leasing Inc. with the summons and complaint. Rule 4(m) of the Federal Rules of Civil Procedure provides:

If a defendant is not served within 120 days after the complaint is filed, the court--on motion or on its own after notice to the plaintiff--must dismiss the action without prejudice against that defendant or order that service be made within a specified time. But if the plaintiff shows good cause for the failure, the court must extend the time for service for an appropriate period.

By Order dated November 18, 2011, the Court directed plaintiff to file proof that defendant was served with process, or show good cause why service had not been effected. The Court explicitly warned that "[i]f plaintiff does not file proof of service or show good cause why service was not effected by December 2, 2011, the Court shall dismiss plaintiff's action without prejudice under Rule 4(m) of the Federal Rules of Civil Procedure." Plaintiff has failed to file proof of service on defendant as directed, or show good cause why service was not made on defendant. Accordingly, it is respectfully recommended that this action should be dismissed without prejudice pursuant to Rule 4(m) of the Federal Rules of Civil Procedure.

FILING OF OBJECTIONS TO THIS REPORT AND RECOMMENDATION

Pursuant to 28 U.S.C. § 636(b)(1) and Rule 72(b) of the Federal Rules of Civil Procedure, the parties shall have fourteen (14) days from service of this Report to file written objections. See also Fed. R. Civ. P. 6. Such objections (and any responses to objections) shall be filed with the Clerk of the Court. Any request for an extension of time to file objections must be made within the fourteen-day period. Failure to file a timely objection to this Report generally waives any further judicial review. Marcella v. Capital Dist. Physicians' Health Plan, Inc., 293 F.3d 42 (2d Cir. 2002); Small v. Sec'y of Health and Human Servs., 892 F.2d 15 (2d Cir. 1989); see Thomas v. Arn, 474 U.S. 140 (1985).

SO ORDERED.

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LOIS BLOOM
United States Magistrate Judge

Dated: December 27, 2011
Brooklyn, New York